IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4128 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

STATE OF GUJARAT - KH KANOJIA JT.SECRETARY (INSPECTION)

Appearance:

MR RJ OZA for Petitioner No. 1-2

MR NAGESH SOOD, AGP for Respondent No. 1

MR HS MUNSHAW for Respondent No. 2

MR PK JANI for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 12/08/2004

ORAL JUDGEMENT

Rule. Mr.Nagesh Sood, Ld. AGP waives service of rule on behalf of respondent no.1. Mr.H.S.Munshaw, Learned Advocate waives service of rule on behalf of respondent no.2. Mr.P.K.Jani, Learned Advocate waives service of rule on behalf of respondent no.3.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged

the legality and validity of the order passed by the State Government dated 20.9.2003 in dismissing the Revision Application and partly confirming the order passed by the Appellate Committee of the District Panchayat dated 13.11.2001 and by further directing to withdraw the deduction of 20% which was given by the Gram Panchayat, Rajpur.

3. The petitioner is an industrial concern situated within the territorial jurisdiction of Rajpur Gram Panchayat. That the petitioner was required to pay the octroi. However, all the industries, 25 in number requested the Gram Panchayat for payment of lumpsum octroi and the necessary proposal was sent to the State Government. It is the case of the petitioner and respondent that on the basis of the approval granted by the State Government with regard to payment of lumpsum octroi, the petitioner was required to pay an amount of Rs.6,74,434/- by way of lumpsum octroi and accordingly, an undertaking was also given by the petitioner on 22.11.1996. It is the case of the petitioner that subsequently the decision was taken by the Sarpanch with regard to payment of Rs.2 lakhs only by way of lumpsum octroi instead of Rs.6,74,434/-. However, the Gram Panchayat raised the demand by issuing a bill directing the petitioner to pay an amount of Rs. 6,74,434/- and therefore, the petitioner had preferred an appeal before the Appellate Committee of the District Panchayat, Mehsana under Section 242 of the Gujarat Panchayats Act, 1993. The hearing was fixed on 17.7.2001. Thereafter, the matter was adjourned to 25.9.2001. On 25.9.2001, the Learned Advocate for the petitioner as well as the Talati cum Mantri sought an adjournment. However, the same was refused and without deciding the appeal on merits considering the fact that the octroi is abolished w.e.f. 1.5.2001 the appeal was dismissed and it was directed to recover the amount as per the notice dated 22.5.2001.

4. Being aggrieved and dissatisfied with the order passed by the Appellate Committee of District Panchayat, Mehsana dated 13.11.2001 in dismissing the appeal, the petitioner preferred Revision Application before the State Government. The State Government dismissed the revision application confirming the order passed by the Appellate Committee of District Panchayat partly, and in the revision application filed by the petitioner an order was passed withdrawing deduction of 20% which was given by the Panchayat in its notice for recovery dated 22.5.2001.

5. The judgement and order passed by the Revisional

Authority i.e. State of Gujarat dated 20.9.2003 in dismissing the Revision Application partly confirming the order passed by the Appellate Committee of District Panchayat, Mehsana dated 13.11.2001 and taking away the benefit of deduction of 20%, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

6. Shri R.J.Oza, Learned Advocate appearing for the petitioner has submitted that the Revisional Authority has no considered the fact that the Appellate Committee of the District Panchayat, Mehsana has not decided the appeal on merits and without considering the appeal on merits only on the ground that now octroi is abolished w.e.f. 1.5.2001 has dismissed the appeal. He has further submitted that the Appellate Committee has not gone into the merits of the case at all. He has further submitted that the notice issued by the Rajpur Gram Panchayat dated 22.5.2001 was contrary to the agreement entered into between the petitioner and the Sarpanch as according to the petitioner, subsequently, the decision was taken to fix the lumpsum octroi at Rs.2 lakhs only instead of Rs.6,74,434/-. He has further submitted that this aspect has not been considered by the Revisional Authority. Not only that, but in a revision application filed by the petitioner challenging the order passed by the District Panchayat, Mehsana, the State Government has taken away the benefit of deduction of 20% which was even given by the Rajpur Gram Panchayat and which was never the subject matter of challeng either before the Appellate Committee and/or before the Revisional Authority. Under the circumstances, he requested to quash and set aside the order passed by the Revisional Authority and remand the matter to the Appellate Committee for deciding the same afresh on merits.

7. On the other hand, Shri P.K.Jani, Learned Advocate for the respondent no.3 has opposed the petition. He has submitted that in view of the undertaking given by the petitioner dated 22.11.1996, the petitioner is bound to pay an amount of Rs.6,74,434/- by way of lumpsum octroi and the appeal itself was not maintainable before the Appellate Committee. He has further submitted that the so-called agreement between the Sarpanch and the petitioner is not binding to the Panchayat. The Sarpanch has no jurisdiction and/or authority to fix the lumpsum octroi at Rs.2 lakhs as suggested by the petitioner. There is no resolution or decision taken by the Panchayat to that effect. However, he has conceded that the deduction of 20% given by the Panchayat in the notice dated 22.5.2001 could not have

been taken away by the Revisional Authority in a revision application filed by the petitioner.

8. Heard the Learned Advocates for the parties. From the bare reading of the order passed by the Appellate Committee of the District Panchayat dated 13.11.2003, it is crystal clear that the Appellate Committee has not decided the appeal preferred by the petitioner under Section 242 of the Gujarat Panchayats Act on merits. Apart from the fact that the adjournment was sought and was not granted but even in absence of the petitioner and or their advocate, the Appellate Authority ought to have decided the appeal on merits. The appeal of the petitioner is dismissed by the Appellate Committee only on the ground that w.e.f. 1.5.2001, the octroi is abolished. Even if the octroi is established w.e.f. 1.5.2001, then also, with regard to the past dispute, the Appellate Committee was required to decide the same on merits. This aspect has not been considered by the Revisional Authority i.e. State of Gujarat at all. Under the circumstances, the order passed by the Revisional Authority - State of Gujarat dated 20.9.2003 and also the order passed by the Appellate Committee of the District Panchayat, Mehsana dated 13.11.2001 are required to be quashed and set aside and the matter is to be remanded to the Appellate Committee, District Panchayat, Mehsana for deciding the appeal on merits in accordance with law and after giving an opportunity to all the concerned parties.

9. So far as the order passed by the Revisional Authority - State of Gujarat with regard to taking away the benefits of deduction of 20% which was given by the Gram Panchayat in its notice dated 22.5.2001, in view of the fact that as the same was not subject matter of appeal and/or before the Revisional Authority and in a revision application filed by the petitioner challenging the judgement an order passed by the Appellate Committee, the Revisional Authority could not have taken away the benefit which was given by the Gram Panchayat. Accordingly, the direction issued by the Revisional Authority to take away the benefit of deduction of 20% is required to be quashed and set aside.

10. Mr.Sud, Learned AGP has also conceded to that fact.

11. For the reasons stated above, the petition succeeds partly. The judgment and order passed by the Revisional Authority dated 20.9.2003, the order passed by the Appellate Committee of District Panchayat, Mehsana

dated 13.11.2001 are hereby quashed and set aside. The matter is remanded to the Appellate Committee of the District Panchayat, Mehsana for deciding the appeal preferred by the petitioner against the notice dated 22.5.2001 issued by the Rajpur Gram Panchayat on merits and in accordance with law after giving an opportunity of hearing to all the concerned parties. It will be open for all the parties to take all contentions which are available to them under the law inclusive of the respondent Gram Panchayat that the appeal is not maintainable in view of the undertaking dated 22.11.1996 given by the petitioner agreeing to make payment of Rs. 6,74,434/- by way of lumpsum octroi. Considering the facts and circumstances of this case, it is directed that the petitioner should deposit an amount of Rs.2 lakhs with Rajpur Gram Panchayat without prejudice to its rights and contentions as a precondition of hearing of the appeal. Shri R.J.Oza, Learned Advocate for the petitioner states that they would deposit the amount of Rs.2 lakhs within a period of four weeks from today and that undertaking to that effect will be filed by the petitioner within a period of one week from today. In view of the aforesaid fact, on deposit of the amount of Rs.2 lakhs, the Appellate Committee, District Panchayat, Mehsana is directed to decide and dispose of the appeal preferred by the petitioner against the notice of recovery dated 22.5.2001 issued by the Rajpur Gram Panchayat within a period of 3 months thereafter. Rule is made absolute.

(M.R.Shah, J)

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